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(3)

Supreme Court, U.S.
FILED
MAY 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1429

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY,

Appellant,

v.

CAROLYN MILLER AND MARVIN RAMSEY MILLER, SR.,

Appellees.

On Appeal from the Supreme Court of Mississippi

MOTION OF APPELLANT TO DEFER CONSIDERATION

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MOTION OF APPELLANT TO DEFER CONSIDERATION

This appeal is presently scheduled for consideration at the Court's May 15, 1986 conference. Appellant respectfully moves the Court to defer consideration of this appeal until its conference on June 19, 1986, at which time this appeal can be considered together with at least one other appeal raising similar or identical issues.

This appeal presents an Equal Protection Clause challenge to Mississippi's fifteen percent appeal penalty statute, *Miss. Code Ann.* § 11-3-23 (Supp. 1982). This challenge is substantively indistinguishable from the challenge to Alabama's ten percent appeal penalty statute before this Court in *Burlington Northern R. Co.* v. *Woods*, No. 85-1088 (*cert. granted*, Mar. 24, 1986). The appeal in this case also presents a challenge to a $350,000 punitive damage award under the Excessive Fines Clause and the Due Process Clause of the Fourteenth Amendment.

Both of these questions are also presented in *Bankers Life and Casualty Co.* v. *Crenshaw*, No. 85-1765. *Crenshaw* was docketed in this Court on April 25, 1986; the Jurisdictional Statement was received by counsel for appellee Crenshaw on or about April 28, 1986. Therefore, appellee Crenshaw's motion, if any, is due to be filed on or about May 28. Under this Court's rules, *Crenshaw* would be circulated on June 3 and considered at the Court's June 19 conference.[1]

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[1] Appellant's counsel herein, also counsel for the appellant in *Crenshaw*, have been informed by the Office of the Clerk that extensions of time to respond are not presently being granted

In its opinion in *Aetna Life Insurance Company* v. *Lavoie*, No. 84-1601 (Apr. 22, 1986), this Court observed that Questions 1 and 4 presented in *Aetna*—which do not differ materially from the questions presented in this appeal and *Crenshaw*—"raise important issues which, in an appropriate setting, must be resolved . . . ." Slip op., at 14. Because this case raises the identical two issues raised in *Crenshaw* which have been characterized in this fashion by the Court in *Aetna*, appellant believes that it would be useful for the Court to consider the *Miller* and *Crenshaw* appeals together since both appeals are due to be considered this Term. Appellant therefore respectfully moves this Court to defer consideration of this appeal to this Court's conference on June 19, 1986 or to its conference on June 26, 1986 if the latter conference would be more appropriate.[2]

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beyond May 31 in order to ensure that cases which would otherwise be ready for consideration this Term are not delayed. Appellant assumes this practice will be adhered to in *Crenshaw*, particularly in light of the fact that appellee Crenshaw has been fully on notice of appellant's intention to docket this appeal since the filing by appellant of an Application for Stay in this Court on March 12, 1986 (A-694).

[2] The questions presented in *Miller* and *Crenshaw* are also presented in the appeal in *Treadwell Ford, Inc.* v. *Campbell, et al.*, No. 85-1799, which was docketed on May 7, 1986. Without any extensions of time, that appeal would be ready for consideration at the Court's June 26, 1986 conference, the appellee's motions being due by June 9, 1986. Appellant's counsel herein, also counsel for appellant Treadwell Ford, Inc. in No. 85-1799, have been informed by the Office of the Clerk that the Court may not consider and dispose of new cases at its June 26 conference. The Court may, in that event, wish to advance its consideration of *Treadwell Ford, Inc.* to its June 19 conference.

May 8, 1986

Respectfully submitted,

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